

1 **II. Service by the United States Marshal**

2 On December 18, 2017, following the filing of Plaintiff’s fourth amended complaint, the
3 Court issued an order directing the United States Marshal to initiate service of process in this
4 action upon Defendants Gutierrez, Scott, Palacios, and Nemoto. (ECF No. 46.) On January 8,
5 2018, the United States Marshal filed a return of service unexecuted as to Defendant Scott. (ECF
6 No. 51.)

7 Federal Rule of Civil Procedure 4(m) provides as follows:

8 If a defendant is not served within 120 days after the complaint is filed, the
9 court—on motion or on its own after notice to the plaintiff—must dismiss the
10 action without prejudice against that defendant or order that service be made
11 within a specified time. But if the plaintiff shows good cause for the failure, the
12 court must extend the time for service for an appropriate period.

13 Fed.R.Civ.P. 4(m).

14 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
15 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
16 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
17 summons and complaint, and . . . should not be penalized by having his or her action dismissed
18 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
19 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So
20 long as the prisoner has furnished the information necessary to identify the defendant, the
21 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d
22 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115
23 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and
24 sufficient information to effect service of the summons and complaint, the Court’s sua sponte
25 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

26 Here, the U.S. Marshal attempted to serve Defendant Scott with the information that
27 Plaintiff provided. However, the Marshal was informed that Defendant Scott is no longer
28 employed by the Fresno County Jail, and no forwarding information was available. (ECF No.
51.) Plaintiff therefore has not provided sufficient information to identify and locate Defendant

1 Scott for service of process. If Plaintiff is unable to provide the Marshal with the necessary
2 information to identify and locate this defendant, Defendant Scott shall be dismissed from this
3 action, without prejudice. Pursuant to Rule 4(m), the Court will provide Plaintiff with the
4 opportunity to show cause why Defendant Scott should not be dismissed from the action at this
5 time.

6 **III. Conclusion and Order**

7 Based on the foregoing, it is HEREBY ORDERED that:

8 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show
9 cause why Defendant Scott should not be dismissed from this action; and

10 2. The failure to respond to this order or the failure to show cause will result in the
11 dismissal of Defendant Scott from this action.

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13 IT IS SO ORDERED.

14 Dated: January 9, 2018

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE

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